



The Hon Christian Porter MP
Attorney-General

MC18-010089

27 SEP 2018

Senator Rex Patrick
Senator for South Australia
PO Box 6100
Parliament House ACT 2600

Dear ~~Senator~~ 

Thank you for your letter of 8 September 2018 seeking further information to my responses to your Questions on Notice (QON) regarding the prosecution of Mr Bernard Collaery and Witness K. I appreciate you writing to me on this matter and understand that you may have experienced some frustration in the brevity of the previous departmentally drafted response.

I recognise the importance of reasonable transparency in this matter and am committed to providing as much information as possible, subject to the variety of legal restrictions that necessarily bear upon my ability to provide such information.

The legal restrictions that affect the information I can make available have a variety of different bases. In particular, the relevant prosecutions involve significant and very real national security considerations and are subject to a range of provisions in the *National Security Information (Criminal and Civil Proceedings) Act 2004* (NSI Act). It is also important that the judicial processes are conducted without commentary which could impact on the fairness and regularity of the prosecutions. Any comments that I make, or information that is provided by me in relation to the proceedings will necessarily be subject to the prioritisation of these interests. While I acknowledge the benefits of being as forthcoming as possible, I note that, even where questions appear innocuous, an accumulation of public comments on the proceedings could prejudice these interests.

Some of the information that you requested may ultimately relate to contested issues in the ultimate proceedings, which the parties themselves may seek to rely upon. The court is also yet to consider this information and it is important that I do not disclose potentially relevant information in a manner that could be seen as pre-empting this judicial process. For example, the parties are currently considering orders under the NSI Act. These orders will set out what information that forms part of the proceedings can be disclosed publicly.

Other aspects of your questions relate to whether intelligence operations occurred. As a matter of longstanding practice successive governments do not confirm or deny the existence of intelligence operations.

However, in the interests of transparency I can provide procedural information which may assist in your understanding of the issues within my responsibility, namely the provision of consent to prosecutions under section 39 of the *Intelligence Services Act 2001*. The below timeline provides an overview of the procedural aspects which culminated in providing my consent to the prosecution.

Date	Event
17 September 2015	Then Commonwealth Director of Public Prosecutions (CDPP), Mr Robert Bromwich SC, wrote to then Attorney-General, Senator the Hon. George Brandis QC, requesting his consent to prosecute.
28 September 2015	Then Attorney-General requested Mr Bromwich to prepare written advice (the Bromwich advice).
1 October 2015	Bromwich advice was finalised.
4 August 2016	Then Attorney-General requested the current CDPP, Ms Sarah McNaughton SC, to consider the Bromwich advice and provide her opinion.
1 September 2016	Ms McNaughton provided her opinion (the McNaughton advice).
20 February 2017	Then Attorney-General requested the Solicitor-General, Dr Stephen Donoghue SC, provide his opinion.
17 May 2017	The Solicitor-General provided his opinion.
19 December 2017	CDPP received the Solicitor-General's opinion.
15 March 2018	CDPP received further advice from external counsel. .
19 March 2018	CDPP wrote to the Attorney-General Porter seeking his consent to prosecute.
11 May 2018	Attorney-General Porter provided consent to the prosecution.
29 May 2018	The Australian Government Solicitor wrote to CDPP requesting that Ms McNaughton invoke the NSI Act.
30 May 2018	Summonses were issued and served, proceedings commenced and the NSI Act was invoked.
12 September 2018	First mention in the ACT Magistrates Court.

As you would be aware, the Commonwealth Director of Public Prosecutions (CDPP) is an independent statutory officer. In this and all other similar matters, the CDPP considered the entirety of the brief of evidence and subsequently made an independent decision that a prosecution was the appropriate course of action; having due regard to the matters requiring consideration under the Prosecution Policy of the Commonwealth.

While I will not answer any question going to the substance of any advice, I have previously described the process that supported the request to me as considered, thorough and detailed. With respect to the public reporting of this issue, it does not appear to me that the journalist noted in your QON, or any other journalist, has reported any information not contained in this response.

I would also note given your interest in this matter, that the former Inspector-General of Intelligence and Security, Dr Vivienne Thom, has stated on the public record that no current or former ASIS officer had raised concerns about alleged Australian Government activity in East Timor with her, or her predecessor. Dr Thom's media release can be found at the following link <https://www.igis.gov.au/public-announcements/no-current-or-former-asis-officer-has-raised-concerns-office-about-any-alleged-australian-government>.

Finally, some elements of your QON relate to the operations of the Australian Federal Police (AFP), responsibility for which falls within the portfolio of the Minister for Home Affairs. I understand you have asked similar questions of the Commissioner of the AFP and that a response is forthcoming.

Thank you for bringing your concerns to my attention. I trust this information is of assistance.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, representing The Hon Christian Porter MP.

The Hon Christian Porter MP
Attorney-General